IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.36 of 1999

Reserved on:September 10, 2007.

Decided on*: *November 06, 2007

Ganesh Kumar **…..Appellant.**

VERSUS

Ramji Dass **…..Respondent.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant: **Mr.Balwant Singh, vice Mr.K.D.Sood, Advocate.**

For the Respondent: **Mr.Dushyant Dadwal, Advocate.**

Kuldip Singh, Judge

The plaintiff is in appeal against the judgment and decree dated 18.12.1998 passed by Additional District Judge-I, Kangra at Dharamshala in Civil Suit No.4-G/95 dismissing the suit of the appellant / plaintiff for recovery of Rs.3 lacs on account of cost of truck No.HPS-5349 and its earnings.

2. The pleaded case of the plaintiff is that truck No.HPS-5349 was earlier owned by Narain Dass which was purchased by the appellant in the year 1987 for a consideration of Rs.1,70,000. The respondent / defendant persuaded the appellant to seek

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

financial assistance from Kuldip Financer, Jallandhar Punjab. The respondent stood surety for the appellant for arranging the finance from the financer. The respondent devoured Rs.20,000 out of the finance advanced by the financer.

3. The truck met with an accident on 19.9.1989 near Rohru and fell into a deep *nullah.* The appellant spent huge amount for making the truck roadworthy. The documents of the truck were taken by the police which were filed along with the challan which was put up against the driver of the truck.

4. The appellant could not pay some instalments of the financer, the respondent forcibly plied the truck for some time till the appellant managed to clear the debt of the truck. The appellant plied the said truck through Dhaliara Truck Union.

5. In or around December 1992 the said truck was impounded by the police for some violation of Motor Vehicles Act. The appellant was required to produce Registration Certificate (RC) of the truck for releasing the truck in his favour. The appellant paid Rs.1500 to respondent as expenses for procuring duplicate RC of the truck. On 10.4.1993 when the said truck was parked at Village Baddal the respondent on the strength of forged RC in his own name got a case registered against the appellant under Section 379 I.P.C. and with the help of police took the said truck from Village Baddal to Amb.

6. The respondent on the strength of forged RC got released the truck from learned Judicial Magistrate, Amb on furnishing a *Supurdari* bond of Rs.3 lacs. The appellant also filed a complaint against the respondent in the Court of learned Sub Divisional Judicial Magistrate, Dehra under Sections 420, 468, 471 and 427 I.P.C. etc. but the learned Sub Divisional Judicial Magistrate ordered the release of the truck in favour of respondent No.1 on *Supurdari* vide order dated 27.5.1993. The appellant challenged the order dated 27.5.1993 in this Court which was rejected on 27.9.1994. The respondent in pursuance of order dated 27.9.1994 furnished security bond of Rs.4 lacs before Judicial Magistrate 1st Class, Amb. The Dehra police completed investigation in F.I.R. No.51/1993 and put up challan in the Court of learned Sub Divisional Judicial Magistrate against respondent and others under Sections 420, 468, 471, 427, 120-B and 34 I.P.C.

7. The learned Judicial Magistrate 1st Class, Amb acquitted the appellant under Section 379 I.P.C. which case was filed at the instance of respondent.

8. The respondent made requests to the appellant for taking back the truck but the said truck has been reduced to shambles by misuse, overuse. It is no more profitable and economically useable and there is no use of taking the custody of the said truck. The appellant is, however, entitled to Rs.4 lacs of security furnished by respondent in the Court of Judicial Magistrate

1st Class, Amb in view of order of this Court but the appellant has filed the suit for recovery of Rs.3 lacs only on account of cost of the truck and earnings therefrom since 10.4.1993, which would have been of the appellant had the truck not been got dishonestly removed from his custody. At least Rs.80,000 could have been earned by plying the said truck in one year after excluding the expenses. On these grounds, the appellant filed the suit for recovery of Rs.3 lacs against the respondent.

9. The suit has been contested by respondent by filing written statement in which preliminary objections of maintainability, valuation, locus standi, lack of cause of action, estoppel, falsehood of the case, mala-fide, jurisdiction, limitation and non joinder of necessary parties have been taken. On merits, it has been admitted that originally Narain Dass was the owner of the truck. It has been denied that respondent persuaded the appellant for seeking financial help from Kuldip Financer Jallandhar. It has been denied that respondent mis-appropriated Rs.20,000 out of the finance advanced by the financer to the appellant. It has been admitted that respondent took possession of the truck being guarantor when appellant failed to pay the instalments to the financer. It has been denied that respondent charged Rs.1500 from appellant for duplicate RC of the truck. It has been alleged that truck No.HPS-5349 was transferred in the name of respondent on 5.3.1993, the appellant had stolen the said truck, therefore,

respondent lodged an F.I.R. No.56/1993 against the appellant on 10.4.1993 and the truck was released in favour of the respondent on 12.4.1993 by learned Judicial Magistrate 1st Class, Amb. It has been alleged that learned Sub Divisional Judicial Magistrate, Dehra has also rightly released the truck in favour of respondent on 27.5.1993. The order passed by this Court on 27.9.1994 rejecting the case of appellant was not denied. The claim of the appellant was denied. The following issues were framed by the learned Court below:-

i) Whether the plaintiff is entitled for the recovery of rupees three lacs, as alleged? OPP
ii) Whether the plaintiff has no cause of action and locus-standi to sue? OPD
iii) Whether the suit is not maintainable, as alleged? OPD
iv) Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD
v) Whether the plaintiff is estopped by his act and conduct to file the present suit, if so its effect? OPD
vi) Whether this Court has no jurisdiction to try the present suit, as alleged? OPD
vii) Whether the suit is not within time? OPD
viii) Whether the suit is bad for non-joinder of necessary parties? OPD
ix) Relief.

10. The learned Additional District Judge dismissed the suit of the appellant on 18.12.1998. Hence, this appeal.

11. I have heard the learned counsel for the parties and gone through the record. The learned counsel appearing on behalf of the appellant has submitted that learned Additional District Judge has misconstrued and misinterpreted the material on record and has erred in dismissing the suit of the appellant / plaintiff. He has submitted that it has been proved on record that appellant is the owner of the truck and the truck was unauthorizedly, illegally taken away from the possession of the appellant. On the basis of material on record, the appellant is entitled to decree, as prayed. The learned counsel appearing for the respondent has supported the impugned judgment, decree.

12. PW-1 Durga Dass, Licence Clerk, M.L.O. Dehra has stated that as per ownership transfer Register, which he has brought in the Court, at Sr.No.300 on 14.9.1989 truck No.HPS-5349 has been transferred from the name of Narain Dass, son of Mangat Ram to Ganesh Kumar, son of Babu Ram. He has placed on record Ext.PW-1/A extract of the Register. In cross examination, he has stated that he cannot tell on what basis this vehicle was transferred. The affidavits of transfer are also kept in their office which he has not brought in the Court on that date.

13. PW-2 Uggar Sain, Criminal Ahlmad, brought the file of F.I.R. No.51/1993 under Sections 420, 468, 471, 427, 120-B, 34

I.P.C. against Ramji Dass etc. He has placed on record photocopy of challan Mark 'A'. In his cross examination, he has stated that he has no record at the time of making the statement from which it can be said that Ganesh Kumar was owner of truck No.HPS-5349.

14. PW-3 Tilak Raj Sharma, Pradhan, Truck Union, Pong Valley Goods Transport, Dhaliara has stated that Ganesh remained member of their union with truck No.HPS-5349. There is a Register of membership which he had not brought in the Court on the date of making the statement. PW-4 Hari Ram has stated that 4 years ago Ganesh approached him for bringing RC from Shimla and he accordingly paid Rs.1500 to him. This amount was paid by Ganesh to Ramji Dass at Dehra in his presence and Ramji Dass handed over a copy of RC to him.

15. PW-5 Amar Singh has stated that Ganesh was the owner of truck No.HPS-5349. On 19.3.1993 Ganesh took Rs.25,000 from Thakur Motor Finance and he was guarantor for that amount. This loan was given against truck No.HPS-5349. In cross examination, he has stated that there is a record regarding finance of the truck but he has not brought that record. The second guarantor was Babu Ram.

16. PW-6 Bidhi Singh has stated that in the year 1993 he was posted at Police Station, Dehra as Investigating Officer. F.I.R. No.51/1993 dated 27.4.1993 was registered at Police Station, Dehra against Ramji Dass under Sections 420, 468, 471, 427, 120-B,

34 I.P.C. The truck No.HPS-5349 was taken into possession. Thereafter, Ramji Dass on the basis of forged RC, got released the truck from Dehra Court. Ganesh had handed over original RC in the case registered at Rohru and after releasing it from there produced before him. Ramji Dass forged RC in the name of Bhagwati Devi, widow and got entered the truck at Ex-Servicemen Union, Barmana and the truck continued to be plied in the name of Bhagwati. In cross examination, he has stated that truck No.HPS-5349 was in the name of Bhagwati. He ultimately said that he does not know that truck No.HPS-5349 has been rightly registered in the name of Ramji Dass.

17. PW-7 Ganesh Kumar - appellant has stated that he purchased truck No.HPS-5349 in 1987 from Narain Dass. He took no objection certificate from MLO Shimla and got prepared RC of the truck at Dehra. He took Rs.70,000 from Kuldip Financer, Jallandhar but out of this amount Rs.20,000 was kept by respondent which he did not pay to him. This truck met with an accident on 19.9.1989, he made the truck roadworthy again. The driver of the truck was challaned in Rohru Court and original papers of the truck were with that challan. In 1990, he committed default for paying two instalments of the truck and respondent took the truck and plied the same. He paid the defaulted instalments and the truck came back to him in March 1992. In December 1992 the truck was impounded by Dehra Police for want of documents. At that time the truck was

attached with Truck Union, Dhaliara. The respondent gave one duplicate RC to him and he paid Rs.1500 to him for this purpose. He got the truck released from the Court on 1.1.1993. On 10.4.1993 respondent implicated him in a false case under Section 379 I.P.C. On the basis of duplicate RC which was in his name and got registered an F.I.R. against him. On the registration of case under Section 379 I.P.C. the police took into possession the truck. The respondent got prepared forged documents of the truck in his favour. The Court released the truck in favour of the respondent. He filed complaint under Sections 420, 468, 471, 427, 120-B, 34 I.P.C. in the Court at Dehra but despite that truck was released in favour of the respondent. He filed an appeal and thereafter the matter was taken in the High Court. The High Court ordered the respondent to furnish security bond of Rs.4 lacs which he submitted to the Amb Court. He was prosecuted under Section 379 I.P.C. but was acquitted in that case but respondent Satnam, Bhagwati, Renu and Ramail Singh were prosecuted at Dehra. He would have earned Rs.75,000-Rs.80,000 after excluding expenses had the truck would have been with him. In cross examination, he has stated that the documents of the truck are in the case at Dehra and he has not produced that record in this case. He admitted his signatures on Ext.D-1 but denied his signatures on receipt Ext.D-2. He has admitted that since 1993 respondent is maintaining and plying the truck.

18. DW-1 Hem Singh, Licence Clerk, MLO Amb has stated that the token tax of vehicle No.HPS-5349 was deposited under the signatures of Ramji Dass. DW-2 Ramji Dass has stated that he was guarantor of Ganesh with Kuldip Financer, Jallandhar for truck No.HPS-5349. He entered into an agreement Ext.D-1 with plaintiff which is signed by plaintiff and the witnesses are Noor Deen and Om Parkash. He paid Rs.2 lacs to plaintiff vide Ext.D-2 in presence of witnesses Pritam Singh and Dev Raj and became owner of truck No.HPS-5349. Thereafter Ganesh gave an affidavit dated 24.11.1992 and truck No.HPS-5349 was registered in his name at Shimla. Thereafter an F.I.R. was got registered against plaintiff as the truck was stolen. The truck was released in his favour by the Court. The plaintiff filed an appeal at Dharamshala which was withdrawn. The plaintiff filed an application in the Court at Amb but the truck was released in his favour (respondent) and the application filed by plaintiff was dismissed. He (respondent) is the owner of the truck. This witness has been given suggestion in the cross examination that he submitted a false affidavit before MLO Shimla and got truck registered in his name.

19. DW-3, Noor Deen, has stated that he knows the parties. An agreement Ext.D-1 was executed between the parties on 15.10.1990 which was signed by him also at place Ext.DW-3/A. In cross examination, he has stated that money was not exchanged in his presence. The agreement was not signed by the parties and

the other witnesses in his presence. DW-4 Pritam Singh has stated that receipt Ext.D-2 was prepared in his presence which bears his signatures at place Ext.DW-4/A. Ganesh Kumar signed Ext.D-2 in his presence. In cross examination, he has stated that he does not know in addition to him who others signed receipt Ext.D-2. DW-5 Ramail Singh has stated that an agreement was executed between the parties which was prepared by Ganesh Kumar and Ramji Dass. The parties signed in his presence. In cross examination, he has stated that on Ext.D-1 the other witnesses were Om Parkash and Noor Deen. Ext.D-1 was prepared in his presence but no money was exchanged. DW-6 Inder Singh, Junior Assistant, Registration and Licensing Authority, Shimla Urban on the basis of record has stated that truck No.HPS-5349 which was registered on 19.7.1982 in the name of Narain Dass at MLO, Shimla was transferred in the name of Ramji Dass, son of Pala Ram on 5.3.1993. The hire purchase agreement of this truck was cancelled on 19.4.1988. This is the entire evidence led by the parties.

20. The question before this Court is whether appellant / plaintiff was the owner of the truck No.HPS-5349 on 10.4.1993 and respondent / defendant has no right to ply the said truck. In case this question is answered in affirmative in favour of the appellant / plaintiff then what was the value of the truck on 10.4.1993 and what loss appellant / plaintiff has suffered due to removal of the truck on 10.4.1993, as claimed by him.

21. The appellant / plaintiff has filed the suit on 6.6.1995 and based his cause of action on 10.4.1993 when respondent / defendant with the help of police took the truck from village Baddal to Amb, in other words, removed the truck from the possession of appellant. The history of the truck prior to 10.4.1993 is not relevant except to the extent that who was the owner of the truck prior to 10.4.1993. DW-6 Inder Singh, Junior Assistant, Registration and Licensing Authority, Shimla Urban has deposed that truck No.HPS-5349 was transferred in the name of Ramji Dass on 5.3.1993 as per record. It is thus clear that on 5.3.1993 Ramji Dass respondent / defendant was the registered owner of the truck No.HPS-5349. A case of theft was got registered on 10.4.1993 at Police Station, Amb vide F.I.R. No.56/1993 by the respondent against the appellant and similarly appellant filed a complaint on 20.4.1993 against respondent and others in the Court at Dehra under Sections 420, 468, 471, 427, 120-B, 34 I.P.C. The learned Magistrate sent the complaint to the police under Section 156(3) Cr.P.C. whereupon F.I.R. No.51/1993 dated 27.4.1993 was registered at Police Station, Dehra.

22. PW-6 Bidhi Singh has stated that vehicle No.HPS-5349 was in the name of Bhagwati. As per DW-6, the truck HPS-5349 was transferred in favour of respondent on 5.3.1993. The appellant has not assailed the transfer of truck in favour of Bhagwati nor has he specifically assailed transfer of truck in favour of respondent on

5.3.1993. The failure on the part of appellant to assail registration of truck in the name of Bhagwati and then in the name of respondent on 5.3.1993 is another hurdle to grant relief to the appellant which he has prayed in the suit.

23. The truck No.HPS-5349 was ordered to be released in favour of respondent vide order dated 12.4.1993 by learned Sub Divisional Judicial Magistrate, Amb and also by order dated 27.5.1993 passed by learned Sub Divisional Judicial Magistrate, Dehra. The appellant filed another application for release of truck before Sub Divisional Judicial Magistrate, Amb which application was dismissed on 19.5.1994. The order passed on 19.5.1994 was assailed by way of criminal revision No.91 of 1994 which was decided on 27.9.1994. There is nothing on record that order dated 12.4.1993 passed by learned Sub Divisional Judicial Magistrate, Amb for releasing the truck in favour of respondent was assailed by appellant. The order dated 27.5.1993 was assailed before learned Sessions Judge, Kangra but that was withdrawn on filing criminal revision No.91 of 1994 against the order dated 19.5.1994. In other words, the order dated 12.4.1993 and order dated 27.5.1993 attained finality. This Court in criminal revision No.91 of 1994 directed the present respondent to furnish security in the sum of Rs.4 lacs to the satisfaction of Judicial Magistrate 1st Class, Amb with the direction that if present appellant succeeds in a competent Court of civil jurisdiction he would be entitled to proceed against the

security so furnished by present respondent. The appellant has miserably failed to prove his title over the truck in question. The truck was released in favour of the respondent by competent criminal Court by two separate orders. In presence of two orders of the criminal Courts, it cannot be said that the truck came in possession of the respondent unauthorizedly.

24. The appellant has not placed on record the Registration Certificate of the truck showing him to be the owner of the truck as on 10.4.1993. On the contrary, DW-6, Inder Singh, Junior Assistant, Registration and Licensing Authority, Shimla Urban, has stated that truck No.HPS-5349 was transferred in the name of respondent on 5.3.1993 as per record. Thus, on 10.4.1993 the alleged date of cause of action pleaded by appellant in the plaint, the respondent was the owner of the truck and thereafter by virtue of release orders of the criminal Courts, the respondent was having legal possession of the truck. The appellant has failed to prove that on 10.4.1993 he was owner in possession of the truck or on that date the truck was illegally taken out from his possession by respondent. Thus, ownership and possession of the truck in favour of the appellant on 10.4.1993 has not been proved, on the contrary ownership and possession of the truck No.HPS-5349 stand proved in favour of respondent.

25. Though the appellant has failed to prove ownership and possession of the truck in his favour on 10.4.1993 and this is

enough to non suit him but appellant has otherwise failed to prove what was the value of the truck on 10.4.1993 and what he would have earned from the truck, had the truck remained with him. He has not led any worth believing evidence on record regarding the value of the truck on 10.4.1993 and other evidence to show the earnings from the truck had the truck remained with the appellant. The appellant has failed to prove this aspect of the case also.

26. The appellant has projected that he has been acquitted in theft case of the truck which was initiated against him at the instance of respondent, but this fact alone is not of any help to the appellant inasmuch as the appellant has failed to prove that he was the owner of the truck on 10.4.1993 by leading cogent evidence. The respondent has submitted that he has been acquitted by criminal Court vide judgment dated 22.1.2004 passed by learned Judicial Magistrate 1st Class (2), Dehra in Crl. Case RBT No.64-II/2001/95 in F.I.R. No.51 of 1993 dated 27.4.1993 registered at Police Station, Dehra under Sections 420, 427, 467, 468, 471, 120-B I.P.C. There is nothing on record to show that respondent forged the documents, as alleged by appellant, for getting the registration of truck No.HPS-5349 in his favour. The learned Additional District Judge has rightly appreciated the material on record in dismissing the suit. No case for interference has been made out.

27. No other point was urged.

28. The result of the above discussion, the appeal fails and is accordingly dismissed with costs.

November 06, 2007 *(soni)*

(Kuldip Singh)
Judge.